

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1933 of 1999

to

FIRST APPEALNo 1941 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Honb'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

ISMAILBHAI DADAMSINH

Appearance:

Mr. R.C. Kodekar, AGP for appellant No.1
Miss. Sejal K. Mandavia for appellant No.2
MR KM SHETH for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE J.R.VORA

Date of decision: 25/10/1999

COMMON ORAL JUDGEMENT

1. Admitted. Mr. K.M. Sheth, learned counsel,

waives service of notice on behalf of opponent/opponents in each appeal. At the request of learned counsel appearing for the parties, all these appeals are taken up for final hearing today.

2. All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated April 30, 1998, rendered by the learned 4th Extra Assistant Judge, Vadodara, in Land Reference Cases Nos. 652 of 1990 to 660 of 1990. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

3. Lands of the claimants-respondents situated at village Valva, Taluka Vaghodia, District Vadodara, came to be acquired for the public purpose, i.e. construction of main canal under Narmada Canal Project, by notification under Section 4(1) of the Act, which came to be published on December 15, 1984 in the government gazette. After following usual procedure under the Act, notification under Section 6 of the Act was published on December 20, 1985. Notices under Sections 9(3)(4) of the Act were served on the claimants. The claimants claimed compensation before the Land Acquisition Officer at the rate of Rs.20/- per sq.mtr. but, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated September 26, 1987, offered compensation to the claimants at the rate of Rs.0.89 ps per sq.mtr. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Vadodara, which were numbered as Land Reference Cases Nos. 652 of 1990 to 660 of 1990. In the reference applications, the claimants claimed compensation of the acquired lands at the rate of Rs.10/per sq.mtr. The said applications were contested by the appellants by filing their reply in each case, inter alia, contending that the award of the Land Acquisition Officer does not call for any interference as the Land Acquisition Officer has taken into consideration all the relevant factors for determination of market value of the acquired lands of village Valva. It was further contended that the Land Acquisition Officer has taken into consideration the registered sale deeds of the last five years prior to issuance of notification under

Section 4 of the Act and had offered a just and adequate compensation to the claimants and, therefore, the applications be dismissed with costs. In view of the rival pleadings of the parties, the Reference Court raised common issues. In order to substantiate the claim advanced in the reference applications, the claimants examined Kantibhai Nanabhai Parmar at Exh.38, who was claimant of Land Reference Case No.660 of 1990. He deposed that the acquired lands were irrigated lands and the claimants used to take 2-3 crops every year. He also deposed that the claimants were getting income out of the agricultural produce of Rs.6000 to Rs.7000/- per bigha. During the course of his deposition, he produced certified copy of 7/12 extracts which showed that the claimants were taking 2-3 crops from the acquired lands.

4. The Reference Court, on consideration of evidence on record, has held that the claimants are entitled to compensation at the rate of Rs. 7.00 per sq.mtr for the acquired agricultural lands of village Valva by the impugned common award giving rise to these appeals.

5. Mr. R.C. Kodekar, learned Assistant Government Pleader, and Miss. Sejal K. Mandavia, learned advocate, for the appellants, submitted that previous awards of the Reference Court rendered in respect of agricultural lands of villages Gadit and Amrapuri are neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.7.00 per sq.mtr. and, therefore, the impugned award should be set aside.

6. Mr. K.M. Sheth, learned counsel for the claimants, submitted that previous award of the Reference Court rendered in respect of agricultural lands of villages Gadit and Amrapuri are comparable as well as relevant for the purpose of determining market value of the lands acquired from village Valva and, therefore, it cannot be said that any error is committed by the Reference Court in placing reliance on the said award for the purpose of determining market value of the lands acquired in this case. What was asserted was that a just award has been passed by the Reference Court determining market value of the lands acquired and, as no ground is made out to interfere with the same, the appeals should be dismissed.

7. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

8. Witness Kantibhai Nanabhai Parmar produced earlier awards of the acquired lands of village Gadit, wherein, the reference Court had determined market price of the acquired lands of village Gadit at the rate of Rs.8/- per sq.mtr. The said judgment and award of the Reference Court in Land Acquisition Reference No.46 of 1989 was challenged in the High Court by way of First Appeals Nos. 441 of 1995 to 454 of 1995, which came to be partly allowed by the Division Bench (Coram: B.N. Kirpal C.J.& A.N. Divecha, J, [as they then were]) on February 6, 1995. The High Court had reduced compensation of the acquired lands of village Gadit by deducting Rs.1 per sq.mtr and determined the market value of agricultural lands of village Gadit at Rs.7.00 per sq.mtr. Notification under Section 4 of the Act in respect of agricultural lands of village Gadit, which was subject matter of the previous award, Exh.25, rendered in Land Reference Case No.46 of 1989, was issued on November 9, 1985. It is not brought on record of this Court that the judgment of the Division Bench of this Court rendered in First Appeals Nos.441 of 1995 to 454 of 1995 was challenged in the higher forum. Therefore, the market value determined by this Court with regard to the acquired lands of village Gadit at the rate of Rs.7.00 per sq.mtr. had become final.

9. Witness Kantibhai had elaborately explained that the lands of villages Gadit and Valva were similar and equal in fertility and situation. Therefore also, the judgment and award of the High Court produced at Exh.27 with regard to acquired lands of village Gadit was relevant and comparable to determine market value of the present acquired lands. The learned counsel for the Acquiring body, Miss. Mandavia, produced map showing situation of villages Gadit, Amrapuri and Valva. The map reflects that village Gadit and village Valva are adjacent to each other. Therefore, in our opinion, the earlier award of the High Court in respect of acquired agricultural lands of village Gadit is most comparable and reliable for the purpose of determination of market value of the acquired agricultural lands of village Valva. The claimants' witnesses, during their

deposition, produced earlier award of the Reference Court in respect of agricultural lands of village Amrapuri at Exh.26 which came to be acquired pursuant to notification published under Section 4 of the Act dated April 7, 1986. The Reference Court had determined the market value of the acquired lands of village Amrapuri as on April 4, 1986 at Rs.7 per sq.mtr. The award of the reference Court came to be challenged before the High Court in First Appeals Nos.2033 of 1994 to 2040 of 1994 and the Division Bench of this Court (Coram:B.N. Kirpal, C.J. (as His Lordship then was) & R.K. Abichandani, J.) had confirmed market value of agricultural lands of village Amrapuri as on July 18, 1986 at the rate of Rs.7 per sq.mtr. awarded by the Reference Court. The judgment of the High Court was challenged in the Supreme Court by way of Special Leave Petitions (C) Nos. 28202-28400/95 which came to be dismissed by the Supreme Court on September 28, 1996. Therefore, the award in respect of agricultural lands of village Amrapuri had become final whereby the market value was fixed at Rs.7.00 per sq.mtr as on April 4, 1986.

10. The submission of the learned counsel for the appellants that the award in respect of agricultural lands of village Amrapuri was not relevant and comparable as village Amrapuri was situated at a distance of more 5 kms, deserves to be accepted. In our opinion, the award of village Gadit can be relied upon for determination of present acquired lands of village Valva as both the villages are situated adjacent to each other. The claimants have also led sufficient evidence in support of their case that the agricultural lands of villages Amrapuri and Gadit are having similar fertility and comparable. As stated earlier, notification under Section 4 of the Act, in respect of the acquired lands of village Gadit, was issued on November 9, 1985, whereas, in the present appeals the acquired lands came to be acquired by notification issued under Section 4(1) of the Act on December 15, 1984. Thus, there was gap of nearly one year between two notifications. Therefore, some deduction will have to be made because of gap of nearly one year between issuance of notifications of the acquired lands of two villages. Therefore, in our opinion, the market price determined by the Reference Court at the rate of Rs.7.00 per sq.mtr. for the acquired lands of village Valva deserves to be reduced by Rs.1.00 per sq.mtr. We, therefore, determine the market value of village Valva at the rate of Rs.6.00 per sq.mtr. as on the date of publication of notification under Section 4 of the Act i.e. December 15, 1984.

11. For the foregoing reasons, all the appeals are partly allowed. The market value of the acquired lands of village Valva determined by the Reference Court is reduced by Rs.1.00/- per sq.mtr. and the market value of the agricultural lands of village Valva is determined at Rs.6.00 per sq.mtr as on the date of publication of notification under Section 4 of the Act, i.e December 15, 1984. The claimants shall be entitled to statutory benefits as granted to them by the Reference Court. The award of the Reference Court be modified accordingly. There shall be no order as to costs.

(swamy)